

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Deborah S. Hines,
Plaintiff

vs

Case No. 1:09-cv-914-HJW-TSH
(Weber, Sr. J.; Hogan, M. J.)

Franklin Savings & Loan,
Defendant

REPORT AND RECOMMENDATION

This matter is before the Court on plaintiff's motion for default judgment, which was filed on March 3, 2010. (Doc. 11).

Pro se plaintiff Hines, initiated this action with the filing of a motion for leave to proceed *in forma pauperis* and a copy of her complaint on December 18, 2009.(Doc. 1). Plaintiff brings this action against defendant Franklin Saving & Loan, alleging violations of the Fair Debt Collection Act, 15 U.S.C. § 1692 et seq. This Court granted plaintiff leave to proceed *in forma pauperis* and plaintiff's complaint was filed on December 23, 2009. (Docs. 2, 3). This Court then directed plaintiff to submit a US Marshal Form 285 (Summons Form) for defendant so that service of process could be made on defendant. (Doc. 3). On February 8, 2010, the Court Ordered the US Marshal to serve a copy of the complaint, summons, and a copy of the Court's December 23, 2009 Order on defendant, as directed by plaintiff. (Doc. 8).

On March 3, 2010, plaintiff filed a Notice of Filing Default Judgment and a Motion for Default Judgment against defendant Franklin Saving & Loan. (Docs. 10, 11). However, the Court's docket system indicates that the summons was returned executed by the US Marshal on February 25, 2010. (Doc. 12).

Pursuant to Fed. R. Civ. P. 12, defendant's answer was due on or before March

18, 2010. Defendant filed an answer on March 18, 2010. (Doc. 13). Accordingly, defendant did not fail to move, plead, or otherwise respond to plaintiff's complaint within the time provided by the Federal Rules of Civil Procedure and her motion for default judgment is without merit. *See* Fed. R. Civ. P. 12 and 55.

IT IS THEREFORE RECOMMENDED THAT: plaintiff's motion for default judgment be DENIED.



Timothy S. Hogan
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING THE FILING OF
OBJECTIONS TO THIS R&R**

Pursuant to Fed. R. Civ. P. 72(b), within fourteen (14) days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X	
		<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: Deborah S. Hines 6925 Stone Dr. Clarkston, MI 48348		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7002 3150 0000 8389 8664	
PS Form 3811, August 2001		Domestic Return Receipt	
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1:09cv914 (Doc. 28)